IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

SHAWNEE MATHIS , et al.	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	**Civil Action No. 1:09-cv-0034**
	)	**Judge Trauger**
	)	**Jury Demanded**
WAYNE COUNTY BOARD OF	)	
EDUCATION,	)	
et al.	)	
Defendants.	)	

RESPONSE TO MOTION IN LIMINE
REGARDING FINDINGS OF THE OFFICE OF CIVIL RIGHTS

Comes now the Defendant by and through counsel and in response to the Motion in Limine of the Plaintiffs to exclude the findings of the Office of Civil Rights of the Department of Education, most notably that the Defendant did not violate Title IX would state the motion should be denied.

Prior to instituting this case the Plaintiffs filed a complaint with the Department of Education, Office of Civil Rights alleging the same matters that are set forth in this case as it relates to Title IX. Unlike most employment discrimination claims, sex discrimination claims under Title IX do not require that an administrative proceeding be commenced by an aggrieved party, but such is purely voluntary.

Admittedly, there is little case law that counsel was able to find addressing this issue. In ***Communities for Equity v. Michigan High School Athletic Ass'n***, 137 F.Supp.2d 910, (W. D. Mich., 2001) the court admitted findings by the Office of Civil Rights in a similar case which was sought to be introduced against the United States. While the court excluded prior findings that the association was not subject to Title IX is did so based upon examination of different facts at a different time. In this case OCR investigated the same complaint made the subject of this suit. Furthermore, since OCR is not a party to this proceeding, neither the Plaintiffs or the Defendant can complain that there is some level of bias inherent in the process. Rather, it is only after the OCR determined that there was no violation that this suit was filed.

In Title VII context, cases were administrative prerequisites are required, courts have reached differing results. The admission of administrative agency determination letters regarding an employment discrimination claim lies within the sound discretion of the trial court. ***Heard v. Mueller Co.***, 464 F.2d 190, 194 (6th Cir.1972); cf. ***Weems v. Ball Metal and Chemical Div***. ., Inc., 753 F.2d 527, 528 n. 1 (6th Cir.1985) (the EEOC cause determination, "in the sound discretion of the trial court, may be admitted in evidence"); ***Bryant v. Martinez***, 46 F. App'x 293 (6th Cir.2000) (decisions of administrative agencies relevant to the merits of a claim are admissible despite the possibility of some prejudicial effect). The Sixth Circuit has found that a court did not abuse its discretion by permitting the introduction of the administrative determination if the district court "specifically instruct[s] the jury that it was free to disregard any conclusions contained in the report because the EEOC may not have had the same evidence as the jury had." ***Blakely v. City of Clarksville***, 244 F. App'x 681, 683 (6th Cir.2007); see also ***Williams v. Nashville Network***, 132 F.3d 1123, 1129 (6th Cir.1997) (finding an EEOC letter of violation to be presumptively inadmissible, but a probable cause determination on the other hand, to be potentially admissible because it "is more tentative in its conclusions"). The argument is stronger for admission of an administrative report when the agency is not a party to the litigation, as in this case. See ***E.E.O.C. v. Sharp Mfg. Co. Of America***, 2008 WL 189847 at *2 (W.D.Tenn. Jan.22, 2008) (when the EEOC is not a party to the litigation and has no interest therein, there is no reason to suspect any lack of trustworthiness). Here where the OCR is not a party the same reasoning would be applicable.

Defendant respectfully submits that the Court should permit introduction of the findings of the Office of Civil Rights. If the Court is concerned with what influence the jury might draw from such, the Court could simply instruct the jury that such is not binding on the jury and it is free to give it the weight it deems appropriate.

Respectfully submitted,

/s/ John D. Schwalb

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CERTIFICATE OF SERVICE

I certify that a true and exact copy of the foregoing motion has been served in accordance with the Federal Rules of Civil Procedure and the Electronic Filing Guidelines for the Middle District of Tennessee upon:

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on this 31st day of May 2011.

/s/ John D. Schwalb
JOHN D. SCHWALB